

Appl. No.10/650,023  
AMENDMENT AFTER FINAL REJECTION  
Docket No. KFHI-109

### **REMARKS**

Claims 1-59 are pending herein. By this Amendment, claim 44 has been amended, and no claims have been added or cancelled. The amendment of claim 44 corrects an inadvertent grammatical error. No new matter is added by this Amendment.

Applicants gratefully acknowledge the allowance of claims 26-53, 58, and 59 and the allowability of claim 24.

#### **I. REJECTION UNDER 35 U.S.C. 103(a)**

Claims 1-23, 25, and 54-57 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Karwowski et al. (U.S. Patent No. 5,731,029) in view of Nakajima (JP 9149757) and Scaglione (U.S. Patent No. 5,094,870) and McGenity et al. (U.S. Patent No. 6,652,892) and Richar et al. (U.S. Patent No. 5,405,836). This rejection is respectfully traversed.

Karwowski et al is directed to the production of jerky products having a high proportion of meat which are flexible and bendable using a rotary molder. Raw meat is cooked, cooled, admixed with other ingredients, rotary molded and then baked in an oven. See the Abstract, col. 2 lines 9-17, col. 3 line 65 to col. 4 line 27, and Examples 1-4. The Examiner admits that Karwowski et al does not disclose adding wheat flour to cooked, cooled meat in the claimed amounts. The Examiner maintains that Nakajima, Scaglione, McGenity et al and Richar disclose that it is known to use wheat flour in making a biscuit in which the dough is rotary molded and therefore it would be obvious to use wheat flour in the jerky product of Karwowski et al.

However, the jerky product of Karwowski et al is a meat-based product which is flexible whereas a pet biscuit as disclosed in the secondary references is a wheat-based

Appl. No.10/650,023  
AMENDMENT AFTER FINAL REJECTION  
Docket No. KFHI-109

product, not a meat-based product, which is hard, not flexible. The secondary references do not involve a cooking step where meat is cooked to denature protein. There is no motivation provided by Karwowski et al to add wheat flour to the cooked, cooled meat in making a jerky product which is meat-based. There is no teaching or motivation as to where to add wheat flour in the Karwowski et al process, or how much should be added or for what purpose, without adversely affecting the flexibility and bendability of the jerky product. The major ingredient, wheat flour of the secondary references produces a hard biscuit, so why use this ingredient in a meat-based product which is supposed to be flexible and bendable without breakage?

The Examiner maintains that the claimed water activity has been shown by the combined references therefore the product of the combined references should not be hard. However, just because two products have the same water activity that does not mean that they have the same hardness or flexibility or tensile strength. As disclosed by McGenity et al at col. 3 lines 11-18:

The water activity reflects the amount of water which is available to micro-organisms for growth and multiplication. At a water activity of less than 0.65, it is not usually necessary to add preservatives to the pet food. At a water activity of from about 0.65 to about 0.86, it is desirable to add preservatives to the pet food to prevent the growth of mould although the growth of bacteria is minimal under such conditions. The water content that corresponds to the water activities defined above can vary considerably depending upon a number of factors, such as the presence and levels of humectants (such as salt, sugar or glycerol etc) in the pet food. (Emphases added.)

Thus, even if the references were properly combinable, which they are not, there is no guidance provided by the references to add wheat flour to the Karwowski et al jerky composition without adversely affecting flexibility or bendability, while unexpectedly

Appl. No.10/650,023  
AMENDMENT AFTER FINAL REJECTION  
Docket No. KFHI-109

increasing tensile strength, reducing breakage, and increasing flexibility as taught by applicants. As disclosed by applicants, it is believed that the formation of a gluten network by the gluten in the wheat flour has the beneficial effects on tensile strength, breakage reduction and flexibility of jerky products. See paragraphs [0018], [0032] and [0033].

**UNEXPECTED RESULTS HAVE BEEN SHOWN FOR THE USE OF WHEAT FLOUR**

Furthermore, in the present specification, applicants have demonstrated unexpectedly superior results for the use of wheat flour compared to a specifically disclosed composition of Karwowski et al, Example 4, and a composition which does not employ wheat flour. In the Examples of the present specification, Table 1 shows the compositions of Examples 1-3 compared to the compositions of: (1) the pet food product disclosed in Example 4 of U.S. Patent No. 5,731,029 to Karwowski et al, which does not contain wheat flour (Comparative Example 1), and (2) jerky strips without wheat flour (Comparative Example 2).

As stated in Paragraph [0070] of the specification, Tables 2-3 show the product of Example 1 has substantially reduced breakage in comparison to the product of Comparative Example 2. The product of Example 1 (with 4.3% by weight of wheat flour based upon the weight of the dough) had only 1 failed run out of 6 runs (i.e., 16.7% failure). In contrast the product of Comparative Example 2 had 6 failed out of 10 runs (i.e., 60% failure). Even with product culling, the product of Comparative Example 2 repeatedly failed.

Appl. No.10/650,023  
AMENDMENT AFTER FINAL REJECTION  
Docket No. KFHI-109

As shown in Table 5, food products made from a dough containing 4% by weight and 10% by weight wheat flour (Experimental B, C, and E) showed an unexpectedly greater tensile strength as compared to: (1) the Control, which is Example 4 of Karwowski et al; (2) samples containing no wheat flour (Experimental A); and (3) samples containing wheat gluten (Experimental D). See paragraph [0074]. For example, as indicated in Table 5, the average maximum force for Experimental B (4% wheat flour) was 17.8% greater than for Control Example 4 of Karwowski et al. Also, the average maximum force for Experimental E (10% wheat flour) was 81.8% greater than for Control Example 4 of Karwowski et al.

As shown in Table 6, food products made from a dough containing 10 % by weight wheat flour (Experimental E) showed an unexpectedly greater flexibility as compared to the Control product, which is Example 4 of Karwowski et al. As shown in Table 6, there was a 15.3 % increase in maximum force to deform or break the 10% by weight wheat flour product (Experimental E) compared to the Control. Also, the % of maximum force at 14 mm deformation was 44.8 for Experimental E and only 5.3 for the Control.

None of the references taken alone or in combination teach or suggest the addition of wheat flour to a rotary molded strip-shaped, high meat content food product as claimed in claims 1-23, 25, and 54-57 unexpectedly increases the strength and flexibility and reduces breakage of the rotary molded strip as demonstrated by the comparative data in the present specification.

Reconsideration and withdrawal of the rejection is respectfully requested.

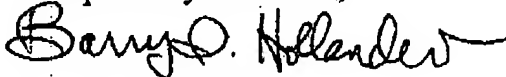
Appl. No.10/650,023  
AMENDMENT AFTER FINAL REJECTION  
Docket No. KFHI-109

II. CONCLUSION

In light of the foregoing remarks, this application is in condition for allowance, and early passage of this case to issue is respectfully requested. If there are any questions regarding this Amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application.

Any additional fees should be charged to, or any overpayment in fees should be credited to, Deposit Account No. 501032 (Docket #DELM-P100).

Respectfully submitted,



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